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EXAMINER	
FLEISCHER, MARK A	
ART UNIT	PAPER NUMBER
4143	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/624,283	WHITACRE ET AL.	
	Examiner	Art Unit	
	MARK A. FLEISCHER	4143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 July 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 - 14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 - 14* is/are rejected.

7)☒ Claim(s) *10* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *22 July 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *10 Nov. 2003 and 13 Dec. 2007*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Status of Claims

1. This action is in reply to the Application filed on 22 July 2003.
2. Claims 1–14 are currently pending and have been examined.

Priority

3. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged.

Information Disclosure Statement

4. The Information Disclosure Statements filed on 10 November 2003 and 13 December 2007 have been considered. Initialed copies of Forms 1449 are enclosed herewith.

Specification

5. The disclosure is objected to because of the following informalities: The tables from pages 20 to 24 are either labeled in a confusing manner or not labeled at all. Appropriate correction is required.

Claim Objections

6. Claim 10 is objected to because of the following informalities: The limitation *for managing performance of the supervisor* appears incorrect. Examiner believes this is a typographical error and should read *for managing performance of the employee*. For purposes of examinations, the Examiner will interpret this claim in this manner. Appropriate correction is required.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 2, 4, 6, 7, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Stuart (US 20010032120 A1).

Claim 1:

Stuart, as shown, describes and/or discloses the following limitations.

- *A method of managing performance of an employee, comprising:*
  - *collecting a set of quantitative data generated as a result of employee activities* (Stuart, in at least the abstract states: "A method of evaluating call agent efficiency is disclosed that includes the step of collecting agent call handling data […]" (emphasis added) and in [0003] states: "[T]he call distributor may possess some type of capability to monitor and report on certain quantitative and qualitative aspects of the agent's call handling performance." (emphasis added) where 'evaluating employee efficiency' corresponds to *managing performance of an employee,* 'collecting…data' corresponds to *collecting a set of … data* and 'quantitative' corresponds to the aforementioned data as noted in the limitation.)*;*
  - *collecting a set of qualitative data input characterizing employee performance* (See the rejection of the previous limitation wherein the term 'qualitative' is specifically disclosed.)*;*
  - *generating a performance grade based on the sets of quantitative and qualitative data* (Stuart, in at least the abstract discloses: "A method of evaluating call agent efficiency is disclosed that includes the step of

collecting agent call handling data for at least one call agent. Agent cost data for the at least one call agent is then collected. A cost based performance indicator for the at least one call agent is determined, at least in part as a function of the agent call handling data and the agent cost data." (emphasis added) where 'collecting…' corresponds to *the sets of quantitative and qualitative data,* and 'performance indicator' corresponds to *performance grade* and 'is determined' corresponds to *generating a performance grade.*)*; and*

- *displaying an intuitive representation of the performance grade* (Stuart, in at least [0045] states: "In addition, while the graphical report […] has been illustrated as a bar graph, it should be appreciated that a number of graphical formats could be utilized to display information for management and call agents [ ] in a useful manner." (emphasis added) where 'display information' corresponds to *displaying…* and where the 'bar graph' corresponds to *performance grade* and 'in a useful manner' corresponds to *an intuitive representation…*).

Claim 2:

Stuart describes and/or discloses the limitations of claim 1 as shown above. Stuart further describes and/or discloses the following limitations.

- *collecting customer management service (CMS) information characterizing actions by a customer service agent from a plurality of CMS systems* (Stuart, in at last [0022] states: "Collection module [ ] preferably interfaces with […] other existing data collection systems, to collect agent call handling data, such as that data previously mentioned." (emphasis added) where the 'collection module' corresponds to the *CMS,* the 'existing … collection systems' corresponds to *a plurality of CMS systems* and the 'agent call handling data' corresponds to *actions by a customer service agent.*).

Claim 4:

Stuart, as shown, describes and/or discloses the limitations of claim 2 as shown above. Stuart further describes and/or discloses the following limitations.

- *receiving call duration information* (Stuart, in at least [0006] states: "… all agent call handling data is collected […]. (emphasis added) where 'data … collected' corresponds to *receiving call … information*. In Stuart [0004] specific reference is made to *call duration*: "This absolute ratio would be calculated dividing the total amount of time an agent or agents spent handling calls by the total number of calls handled by the particular agent or agents.")*;*
- *receiving time keeping information* (Stuart, in at least claim 12 states a method of "utilizing real-time agent call handling data")*;*
- *referencing an efficiency target* (Stuart, in at least [0027] states: "These standards are flexible because management can decide what criteria are important for evaluation, and then input only these criteria as standards." (emphasis added) where 'standards' and 'criteria' correspond to *efficiency target* which, since 'management can decide', *ipso facto* means they are *referenc[ed].*)*; and*
- *generating an efficiency score based on a comparison of the call duration information with the time keeping information and efficiency target* (Stuart, in at least [0009] describes: "[…] a system for evaluating call agent efficiency includes […] a means for determining a cost based performance indicator for the at least one call agent is also provided, wherein the cost based performance indicator is a function of said agent call handling data and said agent cost data." (emphasis added) where 'determining…' corresponds to *generating an efficiency score* that is based on 'call handling data' which encompasses *time keeping information*. In at least [0027], Stuart describes "flexible thresholds" that serve as *efficiency target[s]*. In at least [0047] Stuart

describes "Standard reports, either automatically generated or those generated on demand, allow for a comparison of the actual performance of call agent [ ], with standards, […]." (emphasis added) and in [0048] teach how data is compared to "statistical thresholds", hence meet the limitation pertaining to data that are compared.)

Claim 6:

Stuart, as shown, describes and/or discloses the limitations of claim 1 as shown above. Stuart further describes and/or discloses the following limitations.

- *receiving time keeping information* (Stuart, in at least claim 12 states a method of "utilizing real-time agent call handling data" (emphasis added) where 'utilizing' *ipso facto* requires that such information is *receiv[ed].);*
- *receiving on-line time information* (Stuart, in at least [0004] describes and/or discloses: "agent performance measures monitored by the server, such as the number of calls handled by an agent, the average work time per call of the agent […]" (emphasis added) where the 'average work time per call' corresponds to *on-line information* that is 'monitored', *i.e., receiv[ed].);*
- *referencing an effectiveness target* (Stuart, in at least [0049] states: "This projected C/SWM could be reported to call agent [ ] as a goal toward which to work." (emphasis added) where the 'projected … as a goal toward' is *an effectiveness target* that is 'reported…' hence *referenc[ed].); and*
- *generating an effectiveness score based on a comparison of the on-line time information with the time keeping information and effectiveness target* (Stuart, in at least [0009] describes: "[…] a system for evaluating call agent efficiency includes […] a means for determining a cost based performance indicator for the at least one call agent is also provided, wherein the cost based performance indicator is a function of said agent call handling data and said agent cost data." (emphasis added) where 'determining…' corresponds to *generating an efficiency score* that is based on 'call handling

data' which encompasses *time keeping information*. In at least [0027], Stuart describes "flexible thresholds" that serve as *efficiency target[s]*. In at least [0047] Stuart describes "Standard reports, either automatically generated or those generated on demand, allow for a comparison of the actual performance of call agent [ ], with standards, […]." (emphasis added) and in [0048] teach how data is compared to "statistical thresholds", hence meet the limitation pertaining to data that are compared.).

Claim 7:

Stuart, as shown, describes and/or discloses the limitations of claim 1 as shown above. Stuart further describes and/or discloses the following limitations.

- *excluding a measure in response to a supervisor do-not-apply selection* (Stuart, in at least [0027] states: "These standards are flexible because management can decide what criteria are important for evaluation, and then input only these criteria as standards." (emphasis added) where 'management' correponds to a *supervisor* that 'can decide what criteria', hence is functionally equivalent to *excluding a measure* that is 'decide[d]' which is equivalent to a *selection*.)

Claim 10:

Stuart, as shown, describes and/or discloses the limitations of claim 1 as shown above. Stuart further describes and/or discloses the following limitations.

- *assigning the quantitative data to a supervisor of the employee for managing performance of the supervisor* (Stuart, in at least [0054] states: "[A] supervisor is presented with a full picture that can allow him or her to make an informed and accurate judgment regarding the performance of individual call agents […]" (emphasis added) where 'a supervisor is presented with a full picture' corresponds to *assigning the quantitative data to a supervisor*. Stuart goes on to state "Further, the present invention could also enable supervisors to redirect much of their time now devoted to the collection and

analysis of performance data to other, more important, tasks. For instance, management time could be utilized much more effectively in working with individual call agents and training call agents to correct specific problems." (emphasis added) where the emphasized text corresponds with *managing performance of the employee* (see the objection to claim 10). Finally, these elements all pertain to data as described throughout Stuart. See *e.g.,* the abstract).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

    a) Determining the scope and contents of the prior art.
    b) Ascertaining the differences between the prior art and the claims at issue.
    c) Resolving the level of ordinary skill in the pertinent art.
    d) Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stuart as applied to claim 2 above, and further in view of Scarborough (US 7080057 B2).

Claim 3:

Stuart, as shown, describes and/or discloses the limitations of claims 1 and 2 as shown above. Stuart further describes and/or discloses the following limitations.

- *receiving time keeping information* (Stuart, in at least [0006] states: "[A]ll agent call handling data is collected and then stored for a period of time."

(emphasis added) where the data that 'is collected' encompasses *time keeping information*. Note also that in [0031, Stuart refers to "the standard work time, as calculated …" (emphasis added) where 'work time' specifically corresponds to *time keeping information* which is *receiv[ed]* as noted in [0049]: "[…] the average number of calls and/or type of calls that are received during a given period of time, and input this information as the hypothetical call agent handling data." (emphasis added) where the time of the inputs is *ipso facto* included in the 'call agent handling data'.)*;*

- *receiving an assigned schedule* (Stuart, in at least [0049] states: "[M]anagement could utilize this feature to determine the most cost effective combination of call agents [ ] to be scheduled for one or more shifts." (emphasis added) where the aforementioned 'feature' corresponds to data to be used in scheduling an agent. Note that this data, must, *ipso facto,* be received.)*;*
- *referencing an attendance target* (Stuart, in at least [0049] states: "[M]anagement could use this feature as a motivational tool for one of more call agents [ ], or to set goals for one or more of the call agents [ ]." (emphasis added) where the 'goals' corresponds to *attendance target*.)*;*

Stuart does not specifically disclose targets pertaining to *attendance* and such, but Scarborough, as shown, does. (Scarborough, in at least col. 17, line 13 states: "Quantitative indicators about attendance […] and other performance measures may also be collected." (emphasis added) where the notion of attendance data is collected.) *and* Stuart, further describes and/or discloses the following limitations.

- *generating an attendance score based on a comparison of the time keeping information with the assigned schedule and the attendance target* (Scarborough, as shown above, describes quantitative data pertaining to attendance. Stuart, however, refers to the notion of 'thresholds': "[F]lexible thresholds, can be […] applied to agent call handling […] to generate subsets

of data for the reporting module. The flexible thresholds are preferably the parameters set by management to trigger the generation of real-time exception reports." (emphasis added) where the 'parameters…' corresponds to *attendance target*. Note also, that the concept of 'exception reports' in conjunction with threshold values *ipso facto* requires a *comparison of time keeping information* as values exceeding threshold values 'trigger' such reports. Finally, the time keeping information is associated with a schedule as in Stuart [0042]: "While it is true that Agent 2 started with a higher number of scheduled, or base, work hours than Agent 1, note that the net work time adjustments for Agent 2 were positive, resulting in a high number of productive hours for the week." (emphasis added) where a 'scheduled' workload is described and 'productive hours' further corresponds to *attendance score*.)

The inventions of Stuart and Scarborough both pertain to methods for evaluating the performance of employees using various methods of data collection and processing. Certainly, attendance is an important element considered in employee appraisal systems. Scarborough specifically describes and/or discloses the use of attendance data. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the teachings of Stuart and Scarborough to create a flexible and usable employee management system that encompasses targeted attendance because attendance is an important factor in productivity rates. By incorporating this data in an employee management system, a realistic and useful set of evaluation criteria are established thereby making such invention more practical and useful.

12. Claims 5, 8, 9 and 11–13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stuart as applied to claim 1 above, and further in view of Richman (US 6754874 B1).

Claim 5:

Stuart, as shown, describes and/or discloses the limitations of claim 1 as shown above. Stuart further describes and/or discloses the following limitations.

- *prompting a supervisor to input qualitative performance scores* (Stuart, in at least [0003] describes how "the call distributor may possess some type of capability to monitor and report on certain quantitative and qualitative aspects of the agent's call handling performance." (emphasis added) and corresponds to *qualitative.*)*;*

Stuart does not disclose *prompting a supervisor …,* but Richman, as shown, does. Richman, in at least col. 18, line 2, "After selecting a standard report from the list, the user is prompted to enter in the report criteria […]" (emphasis added) where 'user' corresponds to *supervisor* and 'enter … criteria' corresponds to *input qualitative performance scores.* In at least col. 2, line 33, Richman further states: "[T]he second set of data includes the supervisor's performance evaluation of the employee." (emphasis added) which *ipso facto* requires some input from a supervisor.

- *accessing qualitative comment entries in response to a supervisor input* (Richman, in at least col. 6, line 13 states: "The Career Counselor […] accesses the Employee Evaluation Database […] and inputs information summarizing the counseling sessions into the Evaluation system." (emphasis added) where 'accesses' and 'information summarizing the …' corresponds to *accessing qualitative comment entries…*that result from a supervisor's evaluation per the rejection above.)*;*
- *receiving a qualitative entry from the supervisor referencing a qualitative target* (Richman, in claim 40 states: "the second interface is an electronic form for receiving inputs on employment goals of the first user." (emphasis added) where 'receiving inputs …' corresponds to *receiving a qualitative entry…*that *referenc[es]* 'employment goals'.)*; and*

- *generating a qualitative score based on a comparison of the qualitative entry with the qualitative target* (Richman, in at least col. 14, line 65 states: "A second column labeled "actual" will be completed at the end of the year to facilitate comparison between the goal target and the actual results." (emphasis added) where the 'comparison…' is made between a 'goal target' which corresponds to *qualitative target.* This is encompassed in reports in col. 17, line 56: "The Evaluation System may be used to generate standard reports and custom reports." (emphasis added) and these reports encompass a 'score' as shown in col. 18, line 17: "The Evaluation System allows for searching by […] evaluation score, and all other data items that are stored within the database." (emphasis added) hence a *score* is *generated* as per the limitations.)

Both Stuart and Richman, as shown, teach methods that relate to the evaluation of employees and describe methods for their appraisal encompassing scoring methods. Stuart refers to both quantitative and qualitative metrics while Richman provides methods for using them to generate scoring systems and 'scorecards'. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the teachings of Stuart and Richman because incorporating both quantitative and qualitative measures in employee performance appraisals provides a broader reach in how employees are appraised and so provides greater flexibility and applicability of the invention.

Claim 8:

Stuart, as shown, describes and/or discloses the limitations of claim 1 as shown above. Stuart does not specifically describe and/or disclose the following limitations, but Richman, as shown, does.

- *plotting a grading scale of a based upon a compiled plurality of weighted quantitative and qualitative performance measures* (Richman, in at least col. 8, line 32 refers to "rating scales [that may be] dynamically altered using the

Designer Tool[]" (emphasis added) Richman, in at least col 18, line 8 states: "The report will also include a weighted average of the […] scores in the various competency areas, overall evaluation scores, billing and revenue data, and success at meeting goals, which may serve as the basis for peer comparison." (emphasis added) where 'weighted average' corresponds to *plurality of weighted … performance measures* and 'various competency areas' and 'success at meeting goals' also corresponds to *quantitative and qualitative performance measures.*)

Stuart describes and/or discloses the notion of *plotting a grading scale* (Stuart, in claim 19 states: "means for reporting said cost based performance indicator includes a means for displaying a graphical representation of said cost based performance indicator." (emphasis added) where 'displaying …' corresponds to *plotting…*Also, in [0045] Stuart specifically refers to "call agent performance […] has been illustrated as a bar graph, it should be appreciated that a number of graphical formats could be utilized to display information […] in a useful manner." (emphasis added) where the 'bar graph' corresponds to *plotting a grading scale* as does a 'number of …')*; and*

- *displaying an indicator upon the grading scale corresponding to a compiled performance score* (see the preceding text relating to the rejection under Stuart where the notion of displaying in a graphical format is described).

Both Stuart and Richman, as shown, teach methods that relate to the evaluation of employees and describe methods for their appraisal encompassing scoring methods and various ways to convey appraisal information. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the teachings of Stuart and Richman because incorporating the weighted scoring methods, rating scales and graphical display in employee performance appraisals systems provides a more user friendly system and hence greater likelihood of market success of the system.

Claim 9:

Stuart/Richman, as shown above, describes and/or discloses the limitations of claim 8 as shown above. Stuart further describes and/or discloses the following limitations.

- *referencing compiled performance scores for a plurality of individuals assigned to a group* (Stuart, in at least [0004] states: "In calculating the %AWT, an agent's AWT is compared to an average of an overall group's AWT." (emphasis added) where 'compared…' corresponds to *referencing* and a 'group's AWT' corresponds to *performance scores for …individuals.*);
- *computing a combined score for the group* (Stuart, in at least [0049] states: "This information could then be input for different combinations of call agents [ ] to determine the most cost effective group […]." (emphasis added) where 'different combinations…' corresponds to a *combined score* as it involves a measure for the 'most cost effective group' and 'to determine' corresponds to the act of *computing a combined score.*); *and*

Stuart does not describe and/or disclose the following limitation, but Richman, as shown, does.

- *plotting a grading scale of a based upon a compiled plurality of weighted quantitative and qualitative performance measures* (Richman, in at least col. 8, line 32 refers to "rating scales [that may be] dynamically altered using the Designer Tool[]" (emphasis added) Richman, in at least col 18, line 8 states: "The report will also include a weighted average of the […] scores in the various competency areas, overall evaluation scores, billing and revenue data, and success at meeting goals, which may serve as the basis for peer comparison." (emphasis added) where 'weighted average' corresponds to *plurality of weighted … performance measures* and 'various competency areas' and 'success at meeting goals' also corresponds to *quantitative and qualitative performance measures.*)

Stuart however describes and/or discloses the notion of *plotting a grading scale* (Stuart, in claim 19 states: "means for reporting said cost based performance indicator includes a means for displaying a graphical representation of said cost based performance indicator." (emphasis added) where 'displaying …' corresponds to *plotting…*Also, in [0045] Stuart specifically refers to "call agent performance […] has been illustrated as a bar graph, it should be appreciated that a number of graphical formats could be utilized to display information […] in a useful manner." (emphasis added) where the 'bar graph' corresponds to *plotting a grading scale* as does a 'number of …')*; and*

- *displaying an indicator upon the grading scale corresponding to the computed combined score for the group* (see the preceding text relating to the rejection under Stuart where the notion of displaying in a graphical format is described. Also, note that the *computing* and the 'display' described applies to *groups* as shown in Stuart [0052]: "The flexibility provided […] allows the C/SWT to be calculated for an individual call agent, a call agent team, an entire call center, a base unit comprised of multiple call centers, or the entire call servicing system. Further, the novel graphical reports generated by the present invention preferably utilize standard statistical techniques to graphically represent significant statistical deviations in productivity among operators, groups or call service centers through the use of bell curves, trended data analysis, and other statistical techniques." (emphasis added)).

Both Stuart and Richman, as shown, teach methods that relate to the evaluation of employees and describe methods for their appraisal encompassing scoring methods and various ways to convey appraisal information including the evaluation of groups of employees. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the teachings of Stuart and Richman because incorporating the weighted scoring methods, rating scales and graphical display in

employee and employee group performance appraisals systems provides a more user friendly system and hence greater likelihood of market success of the system.

Claim 11:

Stuart, as shown, describes and/or discloses the following limitations.

- *displaying performance scores of an employee to a supervisor* (Stuart, in at least [0054] states: "[A] supervisor is presented with a full picture that can allow him or her to make an informed and accurate judgment regarding the performance of individual call agents […]" (emphasis added) where 'presented with a full picture' corresponds to *displaying performance scores* and 'call agents' corresponds to *employee*. As this is presented to a 'supervisor' it is displayed *to a supervisor.*);
- *receiving a feedback acknowledgement entry from the supervisor* (Stuart, in at least [0006] states: "In other words, all agent call handling data is collected and then stored for a period of time. […] Further, there is often very little meaningful feedback provided to the agent. What feedback that may be given to the agent may come from a manager or supervisor who has little time to interpret the many reports received […]." (emphasis added) where 'reports received' and 'stored for a period of time' implies some acknowledgment to a system, hence corresponds to *receiving a feedback… entry* and 'feedback' pertains to performance feedback provided to the 'agent' which corresponds to an employee under the *supervisor.*);

Stuart does not describe and/or disclose the following limitations, but Richman, as shown does.

- *prompting the employee to interact with the feedback acknowledgement entry* (Richman, in at least col. 5, line 11 states: "Users interact with the Evaluation System […] For example, an employee is able to access her own evaluation information, but can not access the evaluation information files of other co-workers. It should be noted that a user may have multiple roles. For

example, a group manager may be both a Feedback Receiver and a Feedback Provider. The Evaluation System recognizes this dual role and automatically avoids what would otherwise be redundant information requirements." (emphasis added) where 'users interact' corresponds to *the employee …interact[ing]* and 'Feedback Receiver …' corresponds to *the feedback acknowledgement entry* and 'automatically avoids' corresponds to *prompting the employee to interact.*); *and*

- *tracking accomplishment of the interaction* (Richman, in col. 8, line 58 states: "Career Counselors, project managers, Feedback Providers, and human resources officers can query the Evaluation System to provide a list of Feedback Receivers who are delinquent in creating project scorecards, and can also use the Evaluation System to automatically send the tardy Feedback Receivers reminder emails. Tracking capability continues through all stages of the evaluation process with real-time reporting." (emphasis added) where 'all stages of the … process' encompasses *tracking … of the interaction.*).

Both Stuart and Richman, as shown, teach methods that relate to the evaluation of employees and describe methods for their appraisal encompassing scoring methods and various ways to convey appraisal information including the evaluation of groups of employees. As feedback is an important element in viable appraisal systems, combining the teachings of Stuart and Richman are advantageous to market success. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the teachings of Stuart and Richman because incorporating a feedback component in performance appraisals systems provides a greater likelihood of market success of the system.

Claim 12:

Stuart/Richman describe and/or disclose the limitations of claim 11 as shown above. Richman further describes and/or discloses the following limitations.

- *prompting a supervisor to make a periodic review* (Richman, in at least col. 1, line 34 states: "Typically a company's evaluation policy calls for periodic evaluations (often annual or biannual)." (emphasis added) where 'periodic evaluations' corresponds to *periodic review* and 'annual or biannual' corresponds to a scheduled review, hence is prompted by the schedule.)*;*
- *ranking employees in response to the periodic review* (Richman, in at least col. 8, line 26 states: "The overall rating consists of one of NME (not meeting expectation), MSE (meeting some expectations), PW (performs well and meets expectations), or EE (exceeds expectations). In alternative embodiments of the present invention the rating consists of a numerical score (1-5, 1-10, 1-100), a traditional letter grade (A-F), or other scoring systems." (emphasis added) where 'overall rating' together with 'rating consists of …' corresponds to *ranking employees*. In col. 6, line 12 Richman also states: "The Career Counselor […] inputs information summarizing the counseling sessions into the Evaluation system." (emphasis added) where the 'evaluation' is thus based on 'inputs' resulting from employee reviews, or 'counseling sessions'.)*;*
- *tracking accomplishment of the review* (Richman, in col. 8, line 63 states: "Tracking capability continues through all stages of the evaluation process with real-time reporting.")*; and*
- *reporting the employee rankings for performance incentive decisions* (Richman, in at least col. 20, line 20 states: "The Evaluation System incorporates sources of feedback […] that will allow for more informed […] promotion and incentive decision making." (emphasis added) where 'the evaluation system' provides for *reporting...rankings* and 'incentive decision making' corresponds to *performance incentive decisions*.)

Both Stuart and Richman, as shown, teach methods that relate to the evaluation of employees and describe methods for their appraisal encompassing scoring methods and

various ways to convey appraisal information including the evaluation of groups of employees. As feedback is an important element in viable appraisal systems, combining the teachings of Stuart and Richman are advantageous to market success. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the teachings of Stuart and Richman because incorporating a feedback component in performance appraisals systems provides a greater likelihood of market success of the system.

Claim 13:

Stuart/Richman describe and/or disclose the limitations of claim 11 as shown above. Richman further describes and/or discloses the following limitations.

- *generating performance scores representative of customer management service measures* (Richman, in at least col. 5, line 43 states: "Customers and clients [ ] can input customer service evaluations." (emphasis added) where the emphasized text is *ipso facto* reflective of *customer management service measures,* hence, representative of same.).

Both Stuart and Richman, as shown, teach methods that relate to the evaluation of employees and describe methods for their appraisal encompassing scoring methods and various ways to convey appraisal information including the evaluation of groups of employees. As customer feedback is an important element in viable appraisal systems, combining the teachings of Stuart and Richman are advantageous to market success. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the teachings of Stuart and Richman because incorporating customer feedback measures in performance appraisals systems provides a greater likelihood of market success of the system.

13. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stuart/Richman as applied to claim 13 above, and further in view of Loya (US 20020035506 A1).

Claim 14:

Stuart/Richman describe and/or disclose the limitations of claim 13 as shown above. Stuart/Richman do not specifically describe and/or disclose the following limitations, but Loya, as shown, does.

- *generating a performance score based on attendance* (see the following rejection)*;*
- *generating a performance score based on efficiency* (Loya, in at least [0043] states: "Job Performance can be measured by assigning points between 5 and 1 with 5=Excellent and 1=Unacceptable for a number of preselected elements important to Job Performance, such as Attendance, Motivation, Efficiency, etc." (emphasis added) where 'measured' corresponds to *generating a performance score* and 'Attendance' and 'Efficiency' correspond to *based on …,* respectively in the first two limitations.)*;*
- *generating a performance score based on quality* (See the rejection of the first two limitations where 'performance' using an 'excellent' rating corresponds to the degree of *quality*. In other words, *quality* is synonymous with *excellence*)*; and*

Richman describes and/or discloses the following limitations.

- *generating a performance score based on effectiveness* (see the following rejection)*;*
- *generating a performance score based on professionalism* (Richman, in at least col. 7, line 41 states: "For example, a scorecard may contain the following competency areas: core technical, leadership effectiveness, management effectiveness, marketing sales & communication, service excellence, and specialized technical." (emphasis added) where 'a scorecard', *ipso facto* corresponds to *generating a performance score* and 'effectiveness' corresponds to *based on effectiveness* and 'specialized technical' correrspponds to *based on professionalism*.)

The teachings of Stuart, Richman and Loya all pertain to the employee performance appraisal arts and encompass methods that provide for ways to evaluate a spectrum of core competencies and performance. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the teachings of Stuart/Richman with that of Loya because together they create a versatile, usable and marketable methodology for employee appraisal systems.

Conclusion

Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to Dr. **Mark A. Fleischer** whose telephone number is **571.270.3925.** The Examiner can normally be reached on Monday-Friday, 9:30am-5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, **James A. Reagan** whose telephone number is **571.272.6710** may be contacted.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://portal.uspto.gov/external/portal/pair <http://pair-direct.uspto.gov >. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).

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Examiner, Art Unit 4143 5 March 2008
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